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# City and Town

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## Why Is the Income Approach to Value Used?

by Kevin Baldini

There are three generally accepted approaches to valuing real estate. These include the cost approach, the sales comparison approach and the income approach. In appraisal practice, the cost approach is primarily used for new construction and consists of two valuation components, land and building. The sales comparison approach measures value through recent sales, and is very effective in an active market where similar properties are transferring on a regular basis. The income approach is generally reserved for investment properties, where the income stream can be measured and calculated into a value estimate. Commercial and industrial properties, as well as apartment buildings, fit into this category.

The assessment of real estate for property tax valuation also relies on these three approaches. In fact, according to state regulations, assessors must use two methods when valuing commercial and industrial properties, not just one,

which is the requirement for residential properties. For commercial properties, the cost approach is commonly used in conjunction with the income approach, reconciling land and building components to the indicated value arrived at via the income approach.

Why is the income approach, and not the sales comparison approach, used as the principal method of valuation in the mass appraisal process? The primary reason is that there are generally too few sales in a given community within a two-year period from which to develop a reliable price per square foot for the differing types of business property in that city or town. Another reason is that sales may include items other than real estate that inflate the price and may be difficult to back out of the sales price, such as liquor licenses, personal property and seller financing.

The basic premise of the income approach is that rent can be converted into value through the process of capi-

talization. This approach has the advantage of having more universal and uniform value indicators, and has more generic applicability. The income approach allows the assessors in a community to calculate property value by dividing net operating income by a capitalization rate.

The advantage to this approach, as compared to the sales comparison approach, is that an assessor does not need a lot of office-building sales to draw value conclusions about the rest of the office buildings in town. The same is true with regard to small, retail-building sales. Through the use of income and expense information, communities can develop reliable indicators of market rent and expenses for varying types of commercial and industrial properties. Once rent and expense parameters have been established, capitalization rates can be developed and applied to net operating income to arrive at an indication of value.

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## Fair Cash Value

Income and expense data is essential in determining the fair market value of commercial property. Sometimes, however, a parcel is subject to a long-term lease at substantially less than fair market rent. In those instances, a property owner might file for an abatement with the claim that the parcel is worth less to the owner since it is burdened by an uneconomic lease. Nevertheless, the Supreme Judicial Court has held that a real estate tax is a "tax assessed upon the whole land and not merely on the interest of the person taxed." *Donovan v. Haverhill*, 247 Mass. 69 at 72 (1923).

Consequently, a parcel's assessment must be based on the highest and best use in the hands of any owner, and not merely the interest or value to the current owner.

The Supreme Judicial Court revisited the *Donovan* holding in *Pepsi-Cola Bottling Company v. Board of Assessors of Boston*, 397 Mass. 447 (1986). In this decision, the court held that the Appellate Tax Board (ATB), in determining the fair market value of a parcel through the capitalization of income

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### From the Deputy Commissioner

Under state statutes, cities, towns and districts are permitted to establish reserve funds.

The annual, cumulative reserve balance cannot exceed 5 percent of the prior year property tax levy in a town, 3 percent in a city or 5 percent of the prior year's receipts in a district. The reserve fund is disbursed through transfers approved by the finance committee, or by city council on recommendation of the mayor.

The reserve fund exists to fund extraordinary and unforeseen expenses. How the fund is used depends upon a community's interpretation of the terms "extraordinary" or "unforeseen."

Some communities assume a very conservative approach and use the funds only for dire emergencies (e.g., natural disasters), while others take a more liberal view and use the fund for less critical purposes that were simply not foreseen when the budget was approved. In general, extraordinary or unforeseen items such as an increased insurance premium or replacing a damaged police cruiser are acceptable. Salary increases are generally not an acceptable use of this reserve.

The Division of Local Services (DLS) encourages finance committees to adopt their own guidelines to provide other town officials with a better understanding of the circumstances under which the committee is likely to use the reserve fund. For more information, visit [www.mass.gov/dls/mdmstuf/Technical\\_Assistance/Best\\_Practices/reservefunds.htm](http://www.mass.gov/dls/mdmstuf/Technical_Assistance/Best_Practices/reservefunds.htm).

**Gerard D. Perry**  
Deputy Commissioner

# Legal

## Lasell Village

by James Crowley

A few years ago, Lasell College expressed interest in building an educational community for the elderly on a 13.24-acre portion of its 50-acre campus in the Auburndale section of the City of Newton. The College, through Lasell Village, Inc., a wholly owned and controlled nonprofit educational subsidiary corporation, proposed to construct 18 buildings, containing 200 independent living units, a health care facility with 40 beds, classrooms, and common areas. The "Village" would provide formal educational programs for residents who would have to be at least 65 years of age, and agree to participate in the educational program or risk expulsion from the facility. The City of Newton and abutters opposed the project under the city's zoning ordinance. However, Lasell College contended that the Village was a protected educational use of the land.

When the case came before the Land Court, the Land Court justice found that the Village had an educational purpose since prior Massachusetts court decisions had recognized that the term "education" has a broad and expansive definition. The Land Court noted that M.G.L. Ch. 40A Sec. 3 provides in pertinent part that "no zoning ordinance or bylaw shall ... prohibit, regulate or restrict the use of land or structures ... for educational purposes on land owned or leased ... by a non-profit educational corporation." Consequently, in *Lasell College v. City of Newton* (case no. 158253, March 30, 1993), the Land Court ruled that state statute protected the use of the land for educational purposes by Lasell Village and the parcel was exempt from zoning.

On July 1, 2001 (the exemption qualification date for fiscal year 2002), Lasell Village, Inc. was operating a Continu-

ing Care Retirement Community in 14 buildings with 162 independent living units and a 44-bed nursing facility. Newton assessed the Village for over \$40 million, classified the property as 95 percent residential, 5 percent commercial, and imposed over \$400,000 in taxes for FY02. Lasell Village, Inc. paid the taxes and filed an exemption application that was denied by the assessors. There was a timely appeal to the Appellate Tax Board (ATB). Lasell Village claimed the property was eligible for a charitable tax exemption under M.G.L. Ch. 59 Sec. 5 Cl. 3 as an educational organization.

Many observers were interested in learning whether Lasell Village would prevail in its appeal. Similar retirement communities were being proposed for other college campuses in Massachusetts. The tax consequences of such facilities would have a big impact on host communities. The Newton assessors argued that educational programs might exempt Lasell Village from zoning but would not entitle this nonprofit entity to a Clause 3 charitable tax exemption.

The ATB heard oral arguments and recently rendered its written decision entitled *Lasell Village v. Board of Assessors of Newton*, (docket # F264935, March 9, 2005). In its opinion, the ATB observed that every elder resident at the Village received a private residence (independent living unit) with exclusive use of the premises. Residents also received an array of residential and health-related services such as meals, maintenance, security and medical care. As of July 1, 2001, entrance fees to the Village were steep, ranging from \$197,000 to \$790,000. As of the same date, there were also monthly service fees that ranged from \$1,773 to \$4,751. Lasell Village did not accept Medicaid and there was no financial aid for applicants. The taxpayer did require appli-

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## in Our Opinion

# Focus

## on Municipal Finance

### New Web-Based Income and Expense Forms

by Deborah Stuart

The Income and Expense Forms Committee recently developed Income and Expense form templates for publication on the Division of Local Services' (DLS)

website ([www.mass.gov/dls](http://www.mass.gov/dls)). Communities may choose to use any or all of the forms or modify individual forms to meet specific needs.

The Committee is comprised of representatives of the Massachusetts Association of Assessing Officers (MAAO) and the Division of Local Services (DLS). Members representing the MAAO include: Michael Flynn, Priscilla Hogan,

and Linda Landry. DLS representatives are Joanne Graziano, Kevin Baldini, Paul Corbett and Deborah Stuart.

M.G.L. Ch. 59 Sec. 38D permits assessors to obtain information from owners or lessees of property to assist them in determining the fair market valuation of the property. Request forms are used in the discovery process to obtain data pertaining to the operation of real estate that is necessary to apply the income approach to income producing properties. While these forms pertain to income and expense information, discovery under Section 38D may include any information reasonably required to determine a parcel's fair cash value, including the physical characteristics and condition of the property.

Assessors analyze the data submitted, develop market-based rent schedules and market expense ratios based on property classification, and develop fair market valuations. It is in the best interest of property owners to contribute annual financial data pertaining to the income of the property (not the business operations at a particular location). All information supplied by owners/lessees is confidential and protected from public disclosure.

Providing Web access to standardized, comprehensive forms will save assessors time and money. Assessors who issue the Section 38D request realize a higher response rate from the property owners on an annual basis. Obtaining market data on an annual basis enables assessors to track fluctuations in the market that may be reflected in interim year adjustments as well as re-certification year valuations.

The following forms will be available on the website: Cover letter, Commercial & Industrial Property Income, Apartment Use Property Income, Mixed Use Prop-

**continued on page four**

Board of Assessors  
Town of  
Stuart, MA 01960  
Date:

Document request for specific parcel

Partial Information:

All information supplied is confidential and protected from public disclosure. (Ch 59 § 38D) Return this form within sixty (60) days.

Return deadline identified.

Dear Property Owner:

The Board of Assessors is requesting INCOME AND EXPENSE information on COMMERCIAL, INDUSTRIAL, and APARTMENT properties to help us determine equitable values for assessment purposes. This request is for income and expense information relative to the operation of **real estate** and not the business use within the real estate. We appreciate the cooperation that you have shown the Board in the past.

When determining commercial property values, the Board must weigh financial as well as physical attributes. By completing and returning the enclosed form, you help ensure the development of a sound basis to estimate the income approach to value. The information in the return is used by the board of assessors to determine "market" income and expense levels for commercial and industrial properties. In accordance with **State Law**, all information listed on the form is **not** available to the public for inspection. (Ch 59 § 38D) **Emphasized confidentiality**

While it is in the best interest of property owners to contribute to the establishment of fair assessments, Massachusetts Law also requires such disclosure:

**Section 38D of Chapter 59 (Revised 1998)**  
**Written Request for Information to Determine Valuation of Real Property**

A board of assessors may request the owner or lessee of any real property to make a written return under oath within sixty days containing such information as may reasonably be required by it to determine the actual fair cash valuation of such property.

Failure of an owner or lessee of real property to comply with such request within sixty days after it has been made shall be a fine from any statutory appeal under this chapter, unless such owner or lessee was unable to comply with such request for reasons beyond his control. If any owner or lessee of real property in a return made under this section makes any statement that he knows to be false in a material particular, such false statements shall bar him from any statutory appeal under this chapter.

If any owner or lessee of real property fails to submit such information within the time and in the form prescribed, in addition to any other penalties, there shall be added to the real property tax levied upon the property in question for the next ensuing tax year the amount of fifty dollars; provided, however, that the board of assessors informed said owner or lessee that failure to so submit such information would result in said penalty.

Please note: Massachusetts General Law provides that failure to respond timely and accurately to this information request within sixty (60) days shall cause you to **lose your right to appeal your assessment** and will result in the levy of a fifty dollars (\$50) penalty. (Ch 59 § 38D) **Sanctions identified for failure to respond to request.**

The Board of Assessors thanks you for your cooperation.

I certify under the pains and penalties of perjury that the information supplied herewith is true and correct.

Submitted by: \_\_\_\_\_ Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Owner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Figure 1



## Web-Based Forms

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[illegible]

Annual Expenses for All Property Uses					
Parcel ID:	Location:		Expenses for Calendar Year:		
	Lundborg Amount	Tenants Amount		Lundborg Amount	Tenants Amount
<b>Management &amp; Administrative</b>			<b>Maintenance &amp; Cleaning</b>		
Management Wages or Fee	\$	\$	Wages	\$	\$
Legal & Accounting	\$	\$	Supplies	\$	\$
Security Wages	\$	\$	Hires, Service Contract Fee	\$	\$
Payroll	\$	\$	Outside Hoarding	\$	\$
Group Insurance	\$	\$	Auto Wash Removal	\$	\$
Treasury	\$	\$	Iron Removal	\$	\$
Advertising	\$	\$	Exterminator	\$	\$
Commissions	\$	\$	Oil or	\$	\$
Other	\$	\$		\$	\$
<b>Total</b>	\$	\$	<b>Total</b>	\$	\$
<b>Repairs &amp; Alterations</b>			<b>Capital Improvements</b>		
Exterior	\$	\$	Decorative	\$	\$
Interior	\$	\$		\$	\$
Mechanical	\$	\$		\$	\$
Roofwork	\$	\$		\$	\$
Painting	\$	\$		\$	\$
<b>Total</b>	\$	\$	<b>Total</b>	\$	\$
<b>Utilities</b>			<b>Other Expenses</b>		
Electricity	\$	\$	Rent (Gross, Taxes)	\$	\$
Gas	\$	\$	Reserve for Replacement	\$	\$
Oil	\$	\$	Apartment for Employees	\$	\$
Water	\$	\$	Insurance (1 yr. Premium)	\$	\$
Sewer	\$	\$		\$	\$
<b>Total</b>	\$	\$	<b>Total</b>	\$	\$
Comments:					

### Figures 2 & 3

erty Income, Annual Expenses for All Property Uses, and a glossary of terms.

The cover letter components are: municipal address and date of mailing, parcel identification information, notice of confidentiality and timely return, purpose of the request, citing of the basis of the request in the Massachusetts General Laws, ramification of failure to respond to the request, and signature line (including date and contact information) for respondent.

The primary components of the Commercial & Industrial Property Lease/Rental Terms request are: location, calendar year of request, tenant detail for all potentially rentable areas including storage areas and parking spaces, built-in economic influence escalator or concession, description of sources of other income not directly attributable to any one tenant (parking, laundry, vending, cell tower space). The calendar year income summary recognizes potential market level rents at full occupancy, actual income from all sources and income loss realized due to rent concessions, vacancies, bad debt and collection.

The Apartment Use Property components include: property identification, calendar year, detailed occupancy information itemized by unit, a property summary identifying the total number and average monthly rent and vacancy for each unit type, parking information for spaces rented independently of living units, calendar year potential income and actual loss realized summary. Miscellaneous or other income refers to additional income that is derived from the property not directly attributable to any one tenant, such as laundry facilities, vending machines, pay phones, recreation facilities, etc.

The Annual Expense form's comprehensive design captures data relating to the expenses incurred in the operation of the property during the calendar year, including: landlord and tenant expense contributions, administrative,

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## Web-Based Forms

**continued from page four**

[illegible]

### Figure 4

operating, repairs and alterations of short-lived items such as interior finish, appliances, carpet, exterior siding and roofing. Alterations include tenant fit-outs. Capital improvements include any increase in square footage or number of plumbing fixtures, improvements to update and modernize which lead to a change in use or an upgrade in construction quality. Each section can be expanded or modified and comments are solicited.

For more information, see "Income and Expense Requests, etc. and ATB Dismissals" and "Income and Expense Requests" (*City & Town*, Vol. 17, No. 10, November/December 2004). ■

## Lasell Village

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cants to sign an Educational Services Agreement. Under its terms, residents were expected to satisfy an educational requirement by engaging each year in 450 hours of activities. Yet, the ATB noted that only \$240,000 or about 5 percent of the total monthly service fee revenue was dedicated to educational services by Lasell College. The balance of the fees was spent on operating costs.

In addition, the ATB concluded that the educational opportunities at the Village were so flexible that “walking, playing bridge, reading newspapers, watching television news, and gardening” were among the activities that counted toward the educational requirement. Although some Newton citizens did attend courses with Village residents, participation by nonresidents was very limited. Upon reviewing the evidence, the ATB found that the Village was un-

like other educational institutions in that there was “no evidence that it turned out trained professionals, technicians, scholars or the like.” In other words, the Village had a closed environment with limited emphasis on any broader mission to benefit society.

Based on all the evidence presented, the ATB held that the dominant purpose of Lasell Village was to furnish residential living facilities. Education was only an incidental activity. According to the ATB, the educational component was not substantial enough to satisfy the Clause 3 charitable exemption requirements. Furthermore, the Village did not benefit an indefinite class of the public since its class of beneficiaries was confined and definite. The ATB also found that the Village did not lessen the burdens of government. Since the dwelling units at the Village were effectively leased to the residents, occu-

pancy was in the lessees and not the charitable organization. Consequently, the ATB ruled that the Village did not meet the Clause 3 ownership-occupancy test.

The ATB's denial of exemption had precedent in the Supreme Judicial Court decision of *Western Massachusetts Lifecare Corporation v. Board of Assessors of Springfield*, 434 Mass. 96 (2001). In that case the court held that a nonprofit assisted living facility was taxable since it expressly limited its services to the very wealthy. For a summary of the Springfield decision, refer to the January 2002 issue of *City & Town*.

As a result of its victory at the ATB, Newton was not required to refund taxes to Lasell Village. According to published reports, however, Lasell Village intends to appeal to the Appeals Court. ■

## A Review of the School Committee's Authority to Make Internal Budget Adjustments

by Glenn S. Koocher, M.P.A. and  
Stephen J. Finnegan, J.D.

An area of increasing controversy and some contention among municipal officials is the authority of the school committee over the budget for the local or regional school district. Prior to the passage of Proposition 2½, school committees enjoyed fiscal autonomy, whereby the legislative bodies of the cities and towns were required to appropriate the funds requested by the school committee for school purposes. Proposition 2½ repealed school fiscal autonomy and vested bottom line budget approval with the municipal budget authority. After the passage of Proposition 2½, the Commissioners of Education and Revenue issued a joint memorandum underscoring the line item and transfer authority of school committees based in part on *Leonard v. School Committee of Springfield*, 241 Mass 325 (1922). Subsequently, two laws further reinforced the line item and transfer authority of school committees. (St. 1981, c. 471 and 782.)

The Massachusetts Education Reform Act of 1993 (MERA) made some significant changes to the law governing public education. However, setting the district budget and determining district policy remains firmly with the school committee, (M.G.L. Ch. 71, Sections 34 and 37) and the fiscal authority of the board changed little under MERA. Indeed, one of the changes to school budget authority added the minimum required local contributions and net school spending mandates to Chapter 70.

The final promulgated school budget, of course, is subject to the legal requirements of net school spending but is also subject to review by the mayor or city manager and city council in

cities, and the review of a town finance committee and decision of the town meeting. Regional school district budgets must receive the approval of two-thirds of the school committee and two-thirds of the member municipalities pursuant to M.G.L. Ch. 71, Section 16B, but are otherwise subject to "all the powers and duties conferred by law upon school committees." (M.G.L. Ch. 71, Section 16.) These municipal reviews impact only the final school department budget, and "shall not allocate appropriations among accounts or place any restrictions on such appropriations." (M.G.L. Ch. 71, Section 34.)

School committees make dozens of difficult decisions during the budget process that includes at least one mandatory public hearing (M.G.L. Ch. 71, Section 38N) but in fact, usually involves more. The board must act, often with passionate special interests seated before them, to vote affirmatively or negatively on individual programs and line items recommended by the superintendent of schools. Someone usually goes home disappointed with virtually every decision.

It is no surprise that when municipal budgets are tight special interests lobby with added vigor for their priorities. It is not unusual for school advocates to take their case to the municipal officials, often hoping to reverse a controversial decision of the school committee. More frequently, town meetings, boards of selectmen, or city councils will promulgate the municipal budget, including the final level of school spending, with a strong recommendation to the school committee. Although this may sound like a mandate to the average citizen, it is really only a strongly worded recommendation that is not binding.

M.G.L. Chapter 71, Section 37 is clear that the school committee shall "... review and approve budgets for public education in the district." Moreover, Section 34 adds that "the vote of the legislative body of a city or town shall establish the total appropriation for support of the public schools, but may

not limit the authority of the school committee to determine expenditures within the total appropriation." Furthermore, Section 34 states that "the city or town appropriating body may make non-binding monetary recommendations to increase or decrease certain line items allocating such appropriations."

For example, if a school committee approves a budget of \$10 million for a district where required net school spending is \$9.75 million, the town meeting or city council may approve the lower figure, but only the school committee is empowered legally to make the subsequent internal budget adjustments to cut the \$250,000 trimmed by the municipal legislative body.

Anticipating the potential for a contentious debate and public scrutiny, and in the hope that municipalities will fund at the higher rather than minimally required levels, school districts often present more detailed budget requests with ample documentation and program explanations.

A second major area of budget contention arising since MERA adjusted the dynamics between superintendents and school committees, concerns the authority to transfer among accounts.

Various school committees have adopted policies or rules that allow a superintendent to transfer up to a certain amount, usually five thousand dollars, from one line item to another without the approval of the board. Both Massachusetts Association of School Committees (MASC) counsel and the Department of Revenue, Division of Local Services, have opined that, based upon M.G.L. Ch. 71, Sections 34 and 37, the authority to transfer among accounts is vested solely in the school committee, and therefore may not be delegated to the superintendent or other officer.

While a school committee may not delegate the statutory authority to transfer among accounts to the superintendent, they may grant authority to trans-

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**School Committee Authority**

fer within an account by following the guidance offered in 1994 by the Division of Local Services:

"The school committee could grant the superintendent more discretion by limiting the number of allocations to fewer, more general categories in its budget vote and by labeling subcategories as information only. For example, despite education reform, the school committee could budget general teacher salaries as a cost center with information items for each school. The superintendent could then use amounts shown for one school in another school without the necessity of a formal transfer vote. Conversely, the committee could give principals more authority by voting to allocate actual budget items to

each school, requiring a formal committee vote to transfer from one school to another."

School committees that want to scrutinize the annual operating budget more closely might have many "cost centers" identified in their promulgated budget; others that want to allow the superintendent more discretion could have fewer such accounts. ■

**Editor's Note:** This article represents the opinions and conclusions of the authors and not those of the Department of Revenue.

**Glenn Koocher, M.P.A., is Executive Director of the Massachusetts Association of School Committees. Stephen J. Finnegan, J.D., is General Counsel to MASC.**

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**Income Approach**

The income approach is also an industry standard. The code of ethics for the appraisal industry requires that the appraiser consider all three approaches to value (cost, sales comparison and income) for each analysis, and only disregard an approach if it is not applicable, or if the client specifically wants an approach excluded from the analysis. From my own experience as an appraiser, the income approach was a requirement in the majority of commercial appraisals, and not a choice.

In communities that have a large commercial and industrial tax base, market data may be plentiful and accessible. In smaller communities this may not be the case. Most of the property is owner-occupied and the businesses generally service the local community. However, rental information can cross borders of those towns that have geographic similarities. In many cases retail, office and industrial rents will not be dramatically different in communities that share common borders and have similar property types and economic conditions.

Also, certain assumptions can be made even with limited information. For example, an assessor may assume that in most cases the retail rental rate on Main Street will be more than the retail rate on side streets. He or she may also assume that if good office space (Internet access, good parking, handicap-accessibility, etc.) rents for \$14.00/square foot, older office space with little parking and no handicap-accessibility will rent for less.

By using market data to derive market rental rates and capitalization rates, communities can establish reasonable, defensible and market-based commercial and industrial property values. The income approach is a valid methodology because it follows the same path that the investor and the lender take when considering the worth of an investment property, i.e., it capitalizes the income stream to the property to arrive at its market value. ■

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## Municipalities Joining Comm-PASS for Free Bid Exposure

by Ellen Bickelman, State Purchasing Agent

### Innovative Enhanced Comm-PASS System Modernizes Public Purchasing

Communities from the Berkshires to the Cape & Islands have completed free training for the Enhanced Comm-PASS system. This system replaces the state's seven-year-old original Commonwealth Procurement Access & Solicitation System.

### How much does it cost to use the system?

Comm-PASS is free. The only requirement is Internet access to navigate to [www.comm-pass.com](http://www.comm-pass.com). All Massachusetts eligible public entities can join the Comm-PASS Purchasing Community.

The suite of Web-based purchasing tools includes solicitation and contract creation wizards, approval and notification processes, and searching and reporting tools. These features will streamline and automate processes — from issuing bid announcements and posting bid documents to accepting and answering written bidders' questions and posting award notices.

The benefits extend to all interested bidders conducting business with the Massachusetts public sector through free access to search, download, and print public documents. The estimated value of opportunities to bid is currently in excess of \$1.5 billion.

The new system is self-funded through annual subscription fees paid by interested bidders to increase automation and efficiency. Subscription is not required but offers bidders the ability to:

- receive information on new bid opportunities;
- market their goods and services to the extensive buyer community; and
- reduce administrative tasks.

For more information, visit the Comm-PASS site at [www.comm-pass.com](http://www.comm-pass.com). ■



# DLS Update

## The New 2005 Corporations Listing

Deputy Commissioner Gerard D. Perry has announced that the listing of *2005 Massachusetts Domestic and Foreign Corporations Subject to an Excise* was published on the Division of Local Services' (DLS) Internet website (<http://dorapps.dor.state.ma.us/corpbk/home/home.asp>) and an electronic notice was sent to each community on April 25, 2005. DLS publishes this list solely on the Internet to facilitate keyword and community based searches.

The *2005 Massachusetts Domestic and Foreign Corporations Subject to an Excise* lists all corporations registered to do business in Massachusetts as of January 1, 2005, including corporations that were granted "manufacturing" status or whose manufacturing status was revoked. Insurance companies and financial institutions are also included in this listing, but are listed separately under their own section headings because they are taxed differently from other corporations.

The Massachusetts' Department of Revenue's (DOR) Manufacturing Unit makes every effort to render its manufacturing (M) and revocation (R) decisions in order that all are included in the annual list. However, some decisions are made after publication and are retroactive to January 1 of the current year. It is the policy of DOR to notify assessors of the subsequent decisions by letter. For informational purposes, a separate compilation of subsequent manufacturing and revocation decisions applicable in the current calendar year will be posted (updated) three times during the year — June, September and December. Assessors may check the website for these updates.

## Reminder to Assessors and Clerks

In order for the Division of Local Services (DLS) to maintain a list of qualified assessors, each municipality must annually complete a summary form. Once annual elections are over, assessors should return a copy of the "Assessors Qualification Summary" to Debra Joyce at: Division of Local Services, 40 Southbridge Street, Room 210, Worcester, MA 01608.

This information is required by law and helps DLS choose the proper geographical areas for upcoming assessors' courses. Also, prompt return of this form will give the Division the opportunity to notify any individual who may be nearing the deadline for qualifying. For more information, contact Debra Joyce at 508-792-7300, extension 22315.

The Division also requests that city and town clerks notify the Municipal Data Management/Technical Assistance Bureau as soon as possible if their community accepts the Community Preservation Act by referendum. The notification form, which is self-explanatory, is attached to our Informational Guideline Release No. 00-209 issued in December 2000. It is available online at [www.mass.gov/dls/PUBL/IGR/2000/2000209igr.pdf](http://www.mass.gov/dls/PUBL/IGR/2000/2000209igr.pdf).

## Surplus Property Initiative Promotes Reuse

Government agencies are the largest purchasers of goods and services nationwide. It may be less well known how much usable government surplus equipment is redistributed from Massachusetts' state agencies to cities and towns.

A joint initiative of the Department of Environmental Protection (DEP) and the state Operational Services Division (OSD) is helping communities "mine" for computers, furniture, and office equipment that state agencies no longer need, but are still perfectly usable.

"Reusing equipment and materials is the best way to conserve resources, and this effort has the added benefit of saving cities and towns money in these budget-conscious times," said DEP Commissioner Robert W. Gollidge, Jr.

The DEP Municipal Waste Reduction Program, in cooperation with the State Surplus Office (SSO) at OSD, publicizes the availability of surplus chairs, tables, computers, and other used property. DEP periodically e-mails lists of available items to municipalities across Massachusetts. In operation for 20 years, the SSO is responsible for managing items from state agencies that are downsizing, relocating, or replacing existing equipment.

The DEP Municipal Waste Reduction Program also distributes a "wish list" where communities identify needed equipment. As this equipment becomes available through the state surplus office, municipalities are notified of its availability. For more information, contact John Crisley at the DEP's Boston office at 617-556-1021 or [john.crisley@state.ma.us](mailto:john.crisley@state.ma.us). For information on the State Surplus Property Office, contact Paul Guerino, the state surplus property manager, at 617-720-3146 or [paul.guerino@osd.state.ma.us](mailto:paul.guerino@osd.state.ma.us) ■



## DLS Profile: Chief Financial Officer

As the Department of Revenue's (DOR) Chief Financial Officer (CFO), **Paul Naves** is charged with supervising various financial services within the Department's Administrative Services Division (ASD). In 1984, Paul started his career at DOR as a financial systems analyst and part-time budget analyst preparing spending plans and performing financial analyses. When the Commonwealth introduced the MMARS (Massachusetts Management Accounting and Reporting System) system, Paul acted as the Department's liaison on the project. He has been deeply involved with the Department's business relationship with the Office of the State Comptroller and the Office of the State Treasurer. After the implementation of the new accounting system, Paul took over the Department's Accounts Payable Unit. His 21 years at DOR have been exclusively involved with financial accounting and financial systems work.



**Paul Naves**

Paul oversees 48 staff members who work in the procurement, accounts payable, budget and revenue accounting units within the Financial Services Bureau. The revenue accounting unit is responsible for accounting for all the tax revenue collected by the DOR. In addition, it plays a key role in the distribution of monies that cities and towns receive from various types of locally adopted taxes, such as ferry embarkation fees, and the "hotel-motel" and jet fuel excises. Paul's employees also work closely with the Division of Local Services (DLS) Local Aid Section in the distribution of quarterly local aid payments to cities and towns. The work that Paul and his staff perform in revenue accounting is the vital link between the state accounting system and the State Treasurer's office, which in turn issues the payments to the cities and towns.

The Division has developed a good working relationship with Paul, since many of the functions that he and his staff perform relate to municipalities. According to Lisa Juskiewicz, Director of the Municipal Data Bank/Local Aid Section, "I have had many positive experiences working with Paul and his staff, as they provide the support necessary to interface the quarterly local aid distributions into the state's accounting system. They do this in a timely and accurate manner."

Tom Guilfoyle, DLS Regional Manager and Director of Administration, said "I enjoy working with Paul. He has a genuine interest in helping the Division meet its goals and objectives. Paul gives DLS the same consideration as other larger divisions in DOR when it comes to allocating resources and helping cities and towns."

Paul said that one of the things he especially enjoys about his job is that it gives him the opportunity "to combine finance work with computer work." Originally from Brockton, Paul is a resident of Middleborough. He holds a bachelor's degree in management with a concentration in MIS from UMass Boston. ■

### Fair Cash Value

continued from page one

method, could select an appropriate gross income figure based upon fair economic rents rather than actual rents received under an uneconomic lease. On the expense side, the court also ruled it was permissible for the ATB to use actual expenses (rather than fair economic expenses) to arrive at the parcel's fair market value.

On the other hand, courts in Massachusetts have recognized that provisions in a deed that restrict or otherwise affect the use and enjoyment of the parcel itself could be relevant to a parcel's value for assessment purposes. For example, a deed restriction limiting a developer's use of a parcel in perpetuity must be considered by assessors in valuing the parcel. *Lodge v. Swampscott*, 216 Mass. 260 (1913). Yet, as seen in the *Donovan* decision, Massachusetts courts concluded that assessors should not consider a disadvantageous lease provision that limits or affects an owner's economic benefit from the property. ■

### City & Town

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### Joan E. Gourke, Editor

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